

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 Raymond Smith,
5 Plaintiff

6 v.

7 Accredited Home Lenders, et al.,
8 Defendants

2:15-cv-0565-JAD-GWF

**Order Denying Motion for
Default Judgment**

[ECF No. 27]

9
10 Little has been done in this two-year-old case. On July 6, 2017, the Clerk of Court notified
11 plaintiff Raymond Smith that “[i]f no action is taken in this case by 8/5/17, the court shall enter an
12 order of dismissal for want of prosecution.”¹ One day before that deadline, Smith filed a motion for
13 default judgment against non-appearing defendant Accredited Home Lenders.²

14 Plaintiff skipped a required step in the default-judgment process. As the Ninth Circuit Court
15 of Appeals explained in *Eitel v. McCool*, Rule 55 requires a “two-step process” consisting of: FIRST
16 asking the Clerk of Court to enter default against the non-answering defendant; and then SECOND,
17 after the clerk has entered default, filing a motion (properly supported by a memorandum of points
18 and authorities³) asking the judge to enter default *judgment*.⁴ Because no default against Accredited
19 has been requested or entered, plaintiff’s request for a default *judgment* is not ripe.

20 Even if the plaintiff had first asked the clerk to enter default, this motion for default judgment
21 would be denied. Before the court can grant a request for default judgment, the court must evaluate

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23 ¹ ECF No. 26.

24 ² ECF No. 27.

25 ³ L.R. 7-2(a).

26 ⁴ See *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (“Eitel apparently fails to understand the
27 two-step process required by Rule 55.”); accord *Symantec Corp. v. Global Impact, Inc.*, 559 F.3d
28 922, 923 (9th Cir. 2009) (noting that Rules 55(a) and (b) provide a two-step process for obtaining a
default judgment).

1 several factors including: “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s
2 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action;
3 (5) the possibility of a dispute concerning material facts; (6) whether the default was due to
4 excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring
5 decisions on the merits.”⁵ Plaintiff has not addressed these factors at all, let alone demonstrated why
6 they favor default judgment here. Plaintiff is cautioned that, if is able to obtain the entry of default
7 against Accredited and he wants to renew his request for a default judgment, he must provide a
8 detailed analysis of the factors listed above and how they support a default judgment against
9 Accredited.

10 **ORDER**

11 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s Motion for Default Judgment [ECF
12 No. 27] is **DENIED**. If plaintiff has not obtained default against Accredited and filed a proper
13 motion for default judgment by August 30, 2017, this case will be dismissed for want of prosecution.

14 Dated this 9th day of August, 2017

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17 Jennifer A. Dorsey
18 United States District Judge
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28 ⁵ *Eitel*, 782 F.2d at 1471–72.